

(ii) Application for payment of the employee annuity by the former employee; and

(iii) The former employee's immediate entitlement to an employee annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at employee annuities.

(3) OPM cannot pay a former spouse a portion of an employee annuity before the employee annuity begins to accrue.

(b) Payment to a former spouse under a court order may not exceed the net annuity.

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a court order acceptable for processing.

#### APPLICATION AND PROCESSING PROCEDURES

#### § 838.221 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of an employee annuity. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at employee annuity;

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or FERS or died, the mailing address of the employee.

(c)(1) When court-ordered payments are subject to termination (under the terms of the court order) if the former spouse remarries, no payment will be made until the former spouse submits to OPM a statement in the form prescribed by OPM certifying—

(i) That a remarriage has not occurred;

(ii) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage; and

(iii) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage.

(2) OPM may subsequently require periodic recertification of the statements required under paragraph (c)(1) of this section.

#### § 838.222 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the order;

(iii) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit; and

(iv) That, if he or she disagrees with the amount of the monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins or accrue, and if known, the date on which OPM commences payment under the court order;

## § 838.223

## 5 CFR Ch. I (1–1–05 Edition)

(iv) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit;

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vi) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree dies after payments from an employee to a former spouse have begun, OPM will inform the former spouse that the employee or retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree.

(c) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is not in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) That benefits cannot begin to accrue until the employee retires;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit; and

(iv) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee, separated employee, or retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit;

(iv) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(v) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the accrual of former spouse benefits as determined under § 838.231.

### **§ 838.223 OPM action on receipt of a court order not acceptable for processing.**

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the court order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart C of this part.

### **§ 838.224 Contesting the validity of court orders.**

(a) An employee, separated employee, or retiree who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares the court order submitted by the former spouse is invalid; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until OPM receives a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.